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THE TWO VIRGINIAS

Genesis of Old and New

"A ROMANCE OF AMERICAN HISTORY"

For Freedom's battle once begun,
Bequeathed by bleeding sire to son,
Though baffled oft' is ever won.
—*The Giaour.*

STATE SOVEREIGNTY

Phantom of a Stupendous Folly

No one of the States except Texas
ever was a sovereignty.
—*Abraham Lincoln.*

By GRANVILLE DAVISSON HALL

Author of
Rending of Virginia; Daughter of the Elm
Etc.

1915

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East Tennessee University

PRELUSIVE AND PERSONAL.

This brochure was written five years ago; and it has been in cold storage ever since, waiting for resurrection and judgment day. Cold storage is a valuable commercial device for the preservation of dead pigs and other food commodities, but it is not adapted to conserve the cerebral products of man. A manuscript which some human live-wire has charged with "juice" carries the latent fire of thought; and it only waits for Ingalls' "opportunity" to knock at the door and shock some simple soul with its message.

Not since the days of Job or Homer has any man written a thing he conceited was clever that he did not find he could get no rest till it was printed. How the old monks and orders concealed the precious manuscripts of antiquity and carried them through the dark ages to the dawn of the later civilization. For a manuscript is like murder—it will out! It is charged with immortality—there is no suppressing it. It "has great allies. Earth, air and skies are powers that work for it. Its friends are exultations, agonies and love, and man's unconquerable mind." Wordsworth had been through it—and he knew!

Cold and darkness suggest extinction. Light and warmth are life and salvation. In the Sermon on the Mount, it is said men do not put a light under a bushel. They put it on top, so people can see it. That is what light is for. "Let there be light!" was the first edict fol-

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lowing Creation. What was the good of creating "the heaven and the earth" if nobody could see them?

Why was "The Two Virginias" written? Altruism. The writer thought it might profit the Old Virginians of the present day to be reminded of some of the things their distinguished forbears did, and some they omitted, in the long ago in which they feel so just a pride. Besides, he himself, like the Kaiser, wanted "a place in the sun." Such an aspiration is but the longing of nature—the true reptilian instinct. The first thing the snakes do when they come out of cold storage in the Spring, is to try for the sunny side of a rock. The instinct is as old as Eden, and as modern as the submarine.

It was my fortune—or misfortune—to get mixed up with the Virginia ruction at the beginning of the civil war, in 1861; and I "have grown old and blind" (as George Washington once said) trying to elucidate the merits and demerits of this ancient discord in the Virginia household. The elder of the "Two" is my original mother; the younger, who claimed my allegiance in 1863, is my "really and truly" mother. If my story is well told, it will doubtless appear that I am partial to the younger matron. The old mother—she being also the "Mother of Presidents"—Washington to Wilson—seems to me now more like a step-grandmother, for whom I have the utmost respect but cannot pretend any affection. Indeed, as far back as I can remember anything political, I never did quite like the way the old lady kept the house or ran the farm, nor the kind of people she had around the place.

The recent probate in the United States Supreme Court of the Old Grandmother's will—bequeathing to her daughter one-third of her beautiful "I owe you's"—has dragged both,

once more, into the lime-light; and it may be what I have herein chronicled about their wrangles long ago, across the back fence, will be not untimely, whatever else it may be.

To the story of the "Two Virginias," the reader will see I have hitched a wagon called State Sovereignty. I must plead not guilty of any original intention to do this. But Senator Oliver of Pennsylvania, to whom I am indebted for my text, so got himself "up in the air" in his contention that Governor Peirpoint was revolutionist and usurper, that I am obliged to use this wagon as a ladder to let the Senator down on terra firma once more. He seems to be the victim of something like Frank Stockton's "negative gravity"; and in my endeavor to find ground for him and his argument to stand on, I have been obliged to lug in this ancient dogma and line him up with the late lamented Jefferson Davis, to make him consistent. Having been thus driven by the Senator into the State Sovereignty field, I would invite the reader to take a turn with me around the fences and see what he thinks of them.

Noah Webster defines "Genesis" as the first book of the Bible—"the history of the Creation, the apostacy of man, of the deluge," etc. I have tried to outline the history of the creation of the two Virginias—one reaching back nearly ninety years farther than the other—the measures, the methods and the animus of each, as a structure of government more or less "republican in form." Where, in the progress of the story, "the apostacy of man" crops out, each reader can place that to suit himself. As for the "deluge," let us, like the witty Frenchwoman, put it behind us.

G. D. H.

Glencoe, Illinois,
August, 1915.

THE TWO VIRGINIAS.

Genesis of Old and New.

In January, 1901, the Legislature of West Virginia made provision for a statue of Francis Harrison Peirpoint, Governor of the Restored Government of Virginia, to be placed in the National Hall of Fame, in the United States Capitol. Several years later, the statue was received from the sculptor and set up in Statuary Hall, in the west wing of the Capitol, to await the ceremonial of the unveiling. This did not transpire until April 30, 1910.

As one of the remaining few who knew from personal contact somewhat of the men and the measures that figured in the Virginia Restoration, at Wheeling, in 1861, the writer read in the official publication the eulogies pronounced upon the work of Governor Peirpoint and his co-patriots, in connection with this episode—civic, patriotic, economic, historical, personal—in full sympathy with the spirit which pervaded them; but he paused a little over this passage in the address of Senator Oliver of Pennsylvania:

"From a strictly legal standpoint, it is hard to justify the movement by which the Peirpoint government was set up, although able arguments were presented to the Convention. *It was revolution, pure and simple;* and it required success *to make it even respectable.* It was justified by the dire emergency which confronted the loyal people of West Virginia, *and by that alone.* It met with that

measure of success which made it not only respectable but illustrious; and it is a curious fact that the present government of the old Dominion traces its title through the *usurper, Peirpoint,* and not through the *legitimist, Letcher.*"

This is not a case to be judged solely from the "strictly legal" standpoint. Human nature and civil society have some rights superior to the "legal" devices of the lawyers. The latter must give way when issues of life and death are involved. The rights which involve personal liberty and social order, the right of property—as old and as sacred as civilization—and the indefeasible right of self-preservation—are primal and imperious. *Inter arma leges silent.*

The government of Virginia had been destroyed by the treason of those entrusted with its powers—Letcher nominally at the head of them. A traitorous convention, brought together by him without authority, was trying to deliver the people of Virginia, against the declared wishes of two-thirds of the voters, to an armed rebellion organized to overthrow the government of the United States.

In this emergency, involving property, life and liberty, did those people have to wait for a "legal" adjudication of their right to defend their property, their persons, and their families against seizure and other violence? A struggle of this nature does not need "success" to make it "respectable." If the United States government had been overthrown and western Virginia doomed to absorption in the proposed slave confederacy, resistance to such doom would have been just as necessary, just as righteous and heroic, as it is confessed to be now being successful and "illustrious." Mr. Oliver's declaration that such a "movement" is not respectable unless it succeeds, sets up a standard which dishonors human nature.

If any man still doubts the legality, the complete regularity, of this Virginia restoration under the law of nations and precedent, and under the declared foundation principles of this republic, he would do well to acquaint himself with the action, and the reasons, of the highest tribunal in the land—the Supreme Court of the United States—when all the questions entering into the transaction were considered and adjudicated: first, when the ownership of the counties of Berkeley and Jefferson was in controversy soon after the division of Virginia; second, in the suit of Virginia v. West Virginia, begun at the October term, 1906, for an adjustment of the ante-war debt of Virginia. In the briefs and addresses of counsel in these cases, all purely legal phases of the restoration were subjected to the most critical scrutiny. If Senator Oliver knew of any missing links, that was the time to divulge his information.

The Founding of the Commonwealth.

Let us inquire a little into this old Virginia "legitimacy" and see just how legitimate Mr. Letcher was before he became a traitor to his country and his State. Afterwards, it will be pertinent to ascertain the particulars and nature of the Peirpoint "usurpation."

John Letcher, Governor of Virginia, and those who joined him (it might be more accurate to say, whom he joined) in the conspiracy to deliver to the head of the organized rebellion all the military resources of Virginia, committed offenses which are described in the supreme law of the land as "treason"; and not one of them who participated in the crime would have suffered any wrong if he had been hanged as high as Haman. The things thus done by them put an end to the municipality of Virginia. It had

been a state only by virtue of its being one of the United States; and it ceased to be a State the moment it ceased to maintain a relation of loyalty and amity to the United States.

Let us go back to the opening of the American Revolution and see how Virginia first became a State; what its origin; how organized; on what foundation built; by what means and methods it grew; what its claims to legitimacy; whether it was not, from its ignoble birth by usurpation down to the Rebellion eighty-five years later, an aristocracy under which a large majority of the white citizens were ground under a severe denial of their most vital rights of citizenship, while the ruling minority enjoyed special powers, privileges and immunities, exemptions and discriminations, utterly inconsistent with republican government.

At the beginning of the Revolution—prior to March, 1775—the colonial government of Virginia was dissolved "by an act of regal authority," as described by Philip Doddridge, in the Virginia Convention of 1829-30. Lord Dunmore, the colonial Governor, abandoned his capital at Williamsburg and took refuge on board a ship which carried him to his royal master across the sea. The royal House of Burgesses went into deliquium, and its members became private citizens, "pure and simple." Authority was at an end in Virginia; there was an interregnum. In the language of the Declaration of Independence, soon to be phrased by an eminent Virginian and adopted by all the revolutionary colonies, the government of the Colony of Virginia had "abdicated," and "the legislative powers, incapable of annihilation," had reverted to the people of Virginia "for their exercise." How was a form for a new government to be framed? Who had the right to frame it? Did the citizens of all classes and conditions gather en masse or in

delegated bodies and re-establish local government for themselves by virtue of their primordial right as men and members of the community? No. A very different method was interposed.

The few private gentlemen who had been burgesses under the British crown got together, solely on their own initiative, without authority of any kind, and usurping the legislative powers which belonged to the whole body of the people, passed pretended laws for the election of delegates to meet in convention and organize a new frame of government.

The persons who did this were "freeholders" of a limited class. They provided that in the election called and conducted by them, only "freeholders," like themselves, should be voted for or be eligible to serve in the body to be thus chosen and assembled. The persons thus elected met in May, 1776, and framed a constitution. The Bill of Rights adopted by this body as a preamble to their constitution—as the foundation stones of the government to be organized—was written by "the illustrious George Mason," one of its members. It is this "Bill of Rights" and the name of its author which have given fame to this first Virginia constitution. The Bill of Rights declares:

"All men are by nature equally free and independent and have certain inherent rights of which when they enter into a state of society they cannot by any compact deprive or divest their posterity, namely: the enjoyment of life and liberty, with the means of acquiring and possessing property and pursuing and obtaining happiness and safety.

"That all power is vested in and consequently derived from the people.

"That a majority of the community hath an indubitable, inalienable and indefeasible right to reform, alter or abolish the government.

"That no man or set of men are entitled to exclusive or separate emoluments or privileges but in consideration of public services.

"That *all men having sufficient evidence of permanent common interest with and attachment to the community have a right to suffrage and cannot be taxed or deprived of their property without their consent or their representatives,* nor bound by any law in which they have not in like manner assented for the public good."

A convention which would place a declaration like this at the head of their organic law were bound to provide an equal suffrage for all citizens thus declared entitled to it. Did they do it? On the contrary, they provided that only "freeholders" (who were a minority of the whole body of citizens—holding fifty acres of improved land or one hundred acres of unimproved) should exercise the suffrage and give character to the government in the Commonwealth of Virginia. That such a declaration of rights should have been placed at the head of a constitution which denied to a majority of the people to be governed by it the most essential right attaching to citizenship, is an anomaly never yet explained.

This constitution was never even submitted to the people of Virginia—nor to any class of them—for approval. It was therefore wholly without their authority, at any stage, in any degree. The whole proceeding was an absolute usurpation which nothing in surrounding conditions could or did justify.

The landed aristocracy which thus usurped the powers of government in Virginia, for their own ends, and perpetuated their control in this and subsequent constitutions, had controlled the legislation of the Colony back to the restoration of the Stuarts in England. Prior to that the suffrage had been exercised in Virginia by all the freemen in the colony. In 1676, the freehold suffrage was imposed

on the Colony by a command given to Berkeley, then royal Governor, by Charles II of "infamous memory." The document signed by the King's own royal hand commanded Berkeley to permit none but "freeholders" to exercise the inestimable right of the suffrage.

It was a memorial presented by Chief Justice Marshall in the Virginia convention of 1829-30, which characterized Charles Stuart II as being of infamous memory. In that convention, another delegate (Mr. Henderson, of Loudoun), added another decoration: "One of the most odious and profligate tyrants who ever wielded the British scepter." Mr. Henderson declared "the freehold suffrage was imposed, not by any act of the legislature or of the English parliament, or of the people of either country. It was the offspring of regal interposition entirely; it was the precious fruit of despotism."

This despotic rule was maintained in Colonial Virginia for a hundred years. It persisted—as all evil things do persist, unless cut down by some heroic hand—to the time when the usurping burgesses imposed the same evil restriction on the people of the embryo Commonwealth.

This was in a time of excitement and alarm over the opening of the War for Independence. Yet these measures were not carried through without protest. The common people—who in every country in peaceful times do the rough and necessary world's work—the clearing, the building, the cropping, transporting, trading—in a word, the drudgery and service essential to the world's subsistence and commerce—and who in time of war do the fighting, and in all times do their full share of the tax-paying—were too busy with the British and Tories to give much attention to their own civil rights as citizens. But protest was made,

and Mr. Jefferson was among those who objected to the aristocratic features of the constitution, and especially to its lack of authority. He did not for several years cease his endeavors to have a convention assembled to frame a more liberal and more authoritative instrument.

Precocious Disunion.

Let us here turn aside to notice some developments of a political character in Virginia, in the later years of the Eighteenth century. The first serious menace to the American Union was organized in Virginia before that Union, under the constitution, was a dozen years old. It had its animus in the red republicanism of Thomas Jefferson, seconded by Aaron Burr and kindred spirits, professing to believe that the Federal party sought to subvert the government and establish a monarchy. It is part of the Virginia "genesis" and must be mentioned.

When Jefferson and Burr were candidates for the presidency, in opposition to the re-election of John Adams, Virginia was armed and equipped for war in case the Federalists should be successful. She had built factories for the manufacture of arms and armories to house them; had been for several years laying taxes to equip and maintain her military establishment; and at the opening of the presidential year (1800) had her military ready for mobilization at short notice. Washington, then in retirement, appealed to Patrick Henry to come to the defence of the government against the growing disloyalty and revolt inspired by men whom in his letter he plainly indicated but did not name. Writing January 15, 1799, Washington speaks of "measures systematically and pertinaciously pursued by the

'Republican' party, especially in Virginia, which must dissolve the Union or produce coercion."

"Vain will it be," he says, "to look for peace and happiness, or to the security of liberty or property, if civil discord should ensue. And what else can result from the policy of those among us who by all the measures in their power are driving matters to extremity if they cannot be counteracted effectually? The views of men can only be known or guessed at by their words or actions. Can those of the leaders of the opposition be mistaken, then, if judged by this rule?"

At a date a fortnight later, Judge Iredell, a Justice on the Supreme Bench, appointed by Washington, wrote to his wife:

"The General Assembly of Virginia are pursuing steps which directly lead to a civil war, but there is a respectable minority struggling in defense of the Government, and the Government itself is fully prepared for anything they can do, resolved if necessary to oppose force with force."

Hamilton wrote to Dayton in 1799:

"It is stated, in addition, that the opposition party in Virginia—the headquarters of the faction—have followed up the hostile declarations which are to be found in the declarations of the General Assembly by an actual preparation of the means of supporting them by force; that they have taken measures to put their militia on a more efficient footing—are preparing considerable arsenals and magazines; and (which is unequivocal proof how much they are in earnest) have gone so far as to lay new taxes on their citizens; and amid such serious indications of hostility the safety and duty of supporters of the Government call upon them to adopt vigorous measures of counteraction. It will be wise in them to act upon the hypothesis that the opposers of the Government are resolved, if it should be practicable, to make its existence a question of force."

And to King, January 5, 1800:

"The spirit of faction is abated nowhere. In Virginia it is more violent than ever. It seems demonstrated that the leaders there, who possess completely all the powers of the local govern-

ment, are resolved to possess those of the National by the most dangerous of combinations; and if they cannot effect this, to resort to the employment of physical force. The want of disposition in the people to second them will be the only preventive. It is believed it will be an effectual one."

It was during the excitement of this period that the Virginia and Kentucky resolutions of 1798 and 1799—written respectively by Madison and Jefferson—put a dangerous suggestiveness into the theory of "State Sovereignty." The election of Mr. Jefferson to the presidency—after a prolonged and exciting contest in the House of Representatives, as a result of a tie vote with Burr—and the accession to power of the party out of whose agitation this deadly poison had been brewed, allayed the military furor; and the "sovereignty" dogma did not assume dangerous prominence again until raised in the Senate debates about 1829, and later by the direct issue of "nullification" in South Carolina—a word which Mr. Jefferson in his Kentucky resolutions had been the first to pronounce in American politics.

The Long Fight for a Convention.

Resuming the thread of domestic affairs in Virginia, let us note that in 1784 a petition from Augusta county asked for a constitutional convention; but, though advocated by Mr. Madison, the proposal was defeated, largely through violent opposition from Patrick Henry. In 1806, a bill to submit the question of a convention to the people passed the House of Delegates but was defeated in the Senate. In 1814, a similar measure was brought forward, but failed in the House by a close vote.

As the population increased and spread westward, great inequalities in representation grew up. Around Williams-

burg, the seat of government, counties and settlements were subdivided into small precincts, to each of which two members of the House of Delegates were allowed, while no more was allotted to the larger counties farther removed from the executive influence. No more was allowed to all West Augusta. Representation was distributed in double, triple or even quadruple proportions around Williamsburg, to the great dissatisfaction of people farther west.

In 1816, a large and intelligent population having grown up in the valleys west of the Blue Ridge, a serious agitation for a fairer basis of representation in the Assembly, was started at Winchester. Frederick Cook, General Boyd and Edmund Pendleton prepared and sent out circulars in May, which gave the first decided impulse to the cause of constitutional reform west of the Blue Ridge. These brought together at Winchester, twenty-five to thirty gentlemen, by whom the grievances of Middle and Western Virginia, and means of redress, were discussed.

July fourth following, a convention of delegates from thirty-six counties was held at Staunton, who memorialized the Assembly to equalize representation among the free white people of Virginia according to numbers, and to equalize the land tax; to which was added, on motion of a member from Fairfax, to extend the suffrage to all white male citizens twenty-one years of age who "have evidence of common interest with and attachment to the community" (this being the language of the Bill of Rights). A bill in this form was passed in the House of Delegates. In the Senate a motion was made to introduce representation for slaves. It did not pass the Senate, but a bill was passed to equalize representation in the senatorial districts; and this was the law when the Convention of 1829-30 was called.

Another Convention gathered at Staunton, in 1825. More than a hundred delegates were present. They had come from all parts of the State,—from the Potomac and Tidewater to the Ohio River,—to demand representation in the House of Delegates based on the white population; reduction of the number of delegates in the House; enlargement of the right of suffrage; abolishment of the executive council, and the creation of a more responsible executive. Their object was to bring their grievances before the public. They sat with open doors and kept a journal, which was published in all the gazettes of the day and communicated to the Assembly with a memorial.

As result of this convention, an act of Assembly was passed submitting (but to freeholders only) the question of calling a convention. The act proposed to base representation on what was called the "Federal Number"—that is, three-fifths of the slaves to be counted in the basis. This was called the "black basis." Under discussion, the proposition was made so odious that it was abandoned. It was found if the argument justified basing representation on any part of the slaves, it justified including them all.

The bill as passed based representation in the convention on white population and taxation combined—that is, persons and property. As slaves were property, this element was an offset against the free citizens.

The convention was called by a vote of 21,896 in favor, to 16,646 against. In the West, the vote was almost unanimous in favor of the convention; in the East, almost half the vote was against it.

The Convention of 1829-30.

This was the first constitutional convention ever assembled in Virginia, with the authority of the people behind it; and even then, only a minority of them, for none but freeholders were allowed to vote. It had taken nearly fifty-four years to make this much progress; and even yet, the unlanded white people were denied a share in the selection of the delegates. Nearly two generations had passed under the iron rule made for them by the ex-burgesses, and the East still resisted the assemblage of any body which might take down the bars that hedged in their landed and slave domination and excluded the free white element lacking these requisites of Virginia citizenship.

The Convention of 1829-30 embraced ninety-six members. In the personal distinction of many of the delegates, the ex-burgesses' gathering in 1776, cannot have equalled this. Ex-President Monroe was a delegate from Loudon county and president of the Convention. Ex-President Madison was delegate from Orange. Chief Justice Marshall represented the city of Richmond. John Randolph, Benjamin Watkins Leigh, and numerous other names scarcely less distinguished in that period, figured in the roll-call. Philip Doddridge, Lewis Summers and Alexander Campbell were among the eminent members from the West. Monroe, Madison, Doddridge, Marshall and Summers constituted the most important committee—on the executive and legislative departments and on the fundamental principles of government. Yet even this array of heavy metal did not result in battering down the barriers raised by their predecessors in 1776, against participation in the government by the unendowed white citizen.

A masterly inactivity was clearly the plan of those who controlled this convention. The report of the Committee named was in favor of basing representation in the House of Delegates on the white population exclusively. But nothing came of it. In the discussion "exclusively" was stricken out and the words "and taxation" substituted. This simply continued the existing basis. On this issue was founded most of the debate which occupied the convention; but it had been fore-ordained that it should result in nothing.

Memorials demanding a more liberal suffrage were presented from eastern as well as western counties. Chief Justice Marshall presented one, appealing to the Bill of Rights and quoting from its declarations as their justification. Philip Doddridge went back to the organization in 1776 and showed that it utterly lacked the authority of the people, having nothing behind it save the initiative of the gentlemen who had been burgesses under the Colony, who simply usurped the functions of the people without asking their consent.

There was in this convention a good deal of restlessness—even anger—among the western members over the unwillingness of the East to let down the bars to a wider suffrage and a fairer basis of representation; and eastern members realized that the seed had already been sown for a division of the State. Ex-President Monroe—true to his ancient fame as a peacemaker—addressed the Convention in an endeavor to pour oil on the angry waters. He deprecated the possibility of a severance of East and West as the greatest calamity which could befall the commonwealth. He admitted frankly that the East, with its large slave and landed interests to protect might be excused for an unwillingness to give up the advantages, those interests enjoyed

under existing limitations on suffrage and legislative representation, or to risk these advantages by granting increased political power to classes unfriendly to the existing discriminations. Mr. Monroe expressed solicitude for the promotion of lines of communication and commerce with the distant West, one crossing the mountains on the line of the Potomac, another from the line of the James River, for national reasons. Like other statesmen of his time, he was afraid there might develop a line of cleavage north and south between the original states and the Mississippi Valley, from lack of commercial facilities between East and West, which would result in a movement for a separate government in the Mississippi region, such as it is believed Burr contemplated when he organized his expedition to the Southwest. Such lines, while reaching beyond Virginia, would also promote settlements in western Virginia and strengthen the ties between that outlying region and the tidewater.

But in the matters of a broader suffrage or a fairer basis of representation in the General Assembly, the East had the votes and were unwilling to make the concessions demanded by the West.

At that period Virginia was the only State which still adhered to a strictly freehold suffrage. She had 143,000 free white male citizens, of whom 100,000 paid taxes to the State; of whom, again, only 40,000 were freeholders. This minority, with three-fifths representation for their slaves, held control of all State legislation.

The odium attaching to this aristocratic system in Virginia was not confined within her own boundaries. That it was a matter of criticism elsewhere is shown by an incident in the United States House of Representatives in January, 1805. Mr. Dawson of Virginia had introduced resolutions

to retrocede to Maryland and Virginia the territory each had given for the District of Columbia. The advocates of retrocession laid stress upon the hardship imposed upon the people in the District within the lines of the states from which they had been taken because they were deprived of the political representation in local government enjoyed by the citizens of the states from which they had been withdrawn. They were declared to be the veriest "political slaves."

Mr. Dennis, of Pennsylvania, replying, remarked that if the citizens of that portion of the District west of the Potomac should be retroceded, it would not relieve them from their political slavery, because a large portion of the people of Virginia were already denied representation in the State government; and the only effect of giving back this territory to Virginia would be to add to the number of the "political slaves" already there.

The constitution submitted by the Convention of 1829-30 was adopted by the people. The vote was 41,618 for and 15,563 against. Within the bounds of what is now West Virginia 8,365 votes were cast against the constitution and only 1,383 in favor of it. Philip Doddridge was especially emphatic and influential in his denunciation of it. Doddridge, who died in 1832, was recognized as one of the ablest men in Virginia—or in the United States.

The Convention of 1850-51.

Thus this long-contested vital issue—whether citizenship or property should shape the legislation of the State, and whether the burden of taxation should be borne equitably by all interests—was again referred to the growing future. The Westerners looked hopefully to the growth

west of the mountains to strengthen their cause. The Easterners apparently were weakening on some points of the old and bitter controversy, and recognized that in time western growth might vanquish them.

It had taken more than fifty years to get one convention —how far away was the next? In the twenty years that followed, Virginia could not but feel the impulse of national progress all around her, desperately as she might resist it for the protection of the semi-barbaric system of breeding human chattels for the cane and cotton fields of the South; but twenty years brought around provision for a convention to be held in the winter of 1850-51. The whole number of delegates was to be 135, of whom the territory now in West Virginia was allowed thirty-four.

The convention met in October, 1850, and adjourned to January, to await census data. The foremost and absorbing question when they got to work was, once more, equality of representation and equal suffrage. The attitude of the western men was firmer than ever, and the feeling on both sides more bitter.

On the 10th of May, the convention was in such temper it could not do business and adjourned over.

In the first West Virginia constitutional convention, Mr. Van Winkle stated, in the hearing of the writer, that in the Virginia convention of 1850-51, of which he had been a member, the western members had reached complete concert of action and determined that if the East would not agree to concede the white basis for the House of Delegates, they would withdraw in a body from the convention. The crisis seems to have been reached May 10th, when that day's adjournment occurred; for, upon reassembling, the East was ready to come to terms. The eastern majority did yield the

white basis for the House and made other important concessions, one being the election of governor by the people and another a move in the direction of fairer taxation. The constitution as submitted declared taxation should be "equal and uniform," except that slaves should be taxed on only $300 value at the rate laid on land, and those under twelve years old should not be taxed at all. The West fought hard to keep out this exception, but in vain.

The victory was, after all, a rather barren one for the West; for the East continued in the Senate its representation for three-fifths of its slaves—then numbering near a half million—and thus controlling the Senate, it could effectually check any reformatory legislation which might be attempted by the House.

The constitution was ratified, in a three-days' election, by a vote about seven to one. The only counties giving majorities against it were in the East.

End of the Fruitless Struggle.

This was the end of the struggle in Virginia for democratic government. For a hundred years, while colony under the British crown, and seventy-five years as a state in the American Union, Virginia had been an aristocracy, denying equal part in the government to the majority of its white citizens.

And the end was not yet. The ancient wrong, so deeply rooted in the whole history of Virginia, was carried forward for one more decade, with its unequal representation and its discriminative taxes; with a great population held as chattels yet used to control the legislative policy of the State; with the growing national issue of universal slavery or dis-

union rising like a black storm-cloud in the South and steadily growing in political menace.

The Seal a Misfit.

During the greater part of the three-quarters of a century through which Virginia had been an American State she was absorbed in the industry of breeding negro laborers for the planting states around the Gulf and in the domestic traffic of marketing them. If the men who designed the seal prescribed in her first constitution had been gifted with prophetic ken and the true artistic sense, instead of the amazon with spear and sword standing with one foot on the prostrate tyrant and uttering the legend "Sic semper tyrannis," the design would have been a typical "nigger-trader" armed with the tools of his trade—a black-snake whip and "horse pistol," hand-cuffs and chain—with an auction block and a collection of unhappy chattels in the foreground.

"Legitimacy"—The Genuine Brand.

For more than half the nineteenth century, while the rest of the world was waxing in civilization and humane amelioration, the commonwealth of Virginia was given over to the system which would have been typified by such a seal: all the while denying equal civil rights to white citizens who did not approve of nor participate in the profits of breeding or trafficking in this human commodity.

This was "legitimacy" in old Virginia; rooted away back in the unspeakable cruelty and corruption of English royalty; founded in usurpation and denial of civil rights; maintained in implacable discrimination; ending in treason

and war to maintain and extend this semi-barbaric anthropophagic cult, against the growing protest of the whole enlightened world.

What is to be the future of the African crop planted by Virginia in the states bordering the Atlantic and the Gulf, may well give our wisest statesmen pause. It is a heritage of evil already grown so great as to cast an immense shadow athwart the future. Fixed and inexorable as eternal justice it is, that "the evil men do lives after them."

The Revolt West of the Mountains.

The revolt in the mountains of West Virginia against the bargain made by the Richmond convention in 1861 with the emissary of the Montgomery League, to turn over Virginia for purposes of rebellion to the Southern Confederacy, was a deliverance—as far as it could reach—from the infamous system described; and the visible head of that revolt was a deliverer, not a usurper. The restoration with which his name is linked only restored the Virginia municipality as it existed before the rebellion. The division of the commonwealth afterwards was the logical aftermath of the crop of treason and rebellion gathered at Richmond.

There is nothing in the long history of Virginia which we can be prouder of than the uprising west of the mountains in 1861—nothing approaching it in patriotism or moral heroism, unless we go back to the rebellion of Nathaniel Bacon, against the incapacity or cowardice of Berkeley, to save the people of the colony from the savages.

There were then west of the Alleghenies a resolute and intelligent people numbering between three and four hundred thousand. Most of them were native to the soil and inured to the hardships long suffered in the West under the harrow

of Virginia aristocratic rule. A majority of them were of the freedom-loving Scotch-Irish stock, whose ancestors had been driven from European homes in the eighteenth century; who pouring through the intervales of the Appalachian range in Pennsylvania, Virginia and the Carolinas, planted in those regions the rich blood and rugged virtues which have characterized that hardy and virtuous stock wherever it springs. Not much of the Cavalier element, which found congenial conditions in the tidewater region, ever made its way across the mountains in Virginia. Indeed, it was a hundred years after the early settlements in the tidewater before those people had crossed the fifty miles of forest which separated them from the Blue Ridge. The people who settled the Shenandoah Valley and the valleys between that and the Ohio River, whatever else they lacked, had one sterling virtue found in all mountain peoples: they were vigilant to resist encroachment upon their liberties.

THE RESTORATION AT WHEELING.

When the treasonable combination at Richmond had consummated the barter of all the military resources of Virginia to the Confederacy, what were these transmontane people to do? The crisis was urgent—imperative—instant! They did what any people deprived of government have a right to do. They gathered in public assemblages and everywhere denounced their betrayers; declared their adhesion to the national government, now attacked by a great organized rebellion; and in the exercise of their rights as citizens of Virginia—defined and declared in their own Bill of Rights and in the contemporaneous Declaration of Independence—they reorganized their government in assertion of their imprescriptable rights, and refused to be driven from the Union under which they had been free and prosperous.

The May Convention.

Seven days after the Virginia ordinance of secession was passed at Richmond, behind locked doors, amid drawn pistols and other terrors, the call went out for the May convention at Wheeling. That body, through a three-days' sitting, declined to employ any revolutionary measures. They denounced the attempted withdrawal of Virginia as a nullity, and the bargain to deliver them to the Southern Confederacy as a violation of all their rights as citizens of State and nation. They affirmed their fealty to the United

States and their detestation of the traitorous cabal. They were determined to resist the attempt to decitizenize them. They constituted a central committee to exercise their powers; who appealed to the loyal people of Virginia, wherever free to act, to join them in rescuing the commonwealth from the traitors who had seized it and in restoring it to a relation of loyalty to the United States. They appointed elections to be held June 4th to choose delegates to a convention to meet in Wheeling June 11th, and invited the members of the General Assembly, who would be chosen at the regular election May 23rd, to take seats as members of the June convention.

The June Convention.

The convention thus called and constituted embraced men of high character, many of them able and experienced in public affairs. There were delegates from thirty-four counties, some of these from eastern counties, where Confederate soldiery prevented any organized action but could not prevent individual citizens from going to declare their approval of the movement and their wish, as far as possible, to encourage and co-operate with it.

The groundwork laid by this body and the detail of the measures taken for the rebuilding of the wrecked municipality of Virginia—betrayed and abandoned by the "legitimist Letcher"—are within the reach of all who care to study them. It is sufficient to the scope of this paper to mention the essential things said and done constituting the foundation stones of the superstructure raised and restored.

Declaration of Wrongs and Rights.

In the third day's sitting, the committee to prepare business reported a declaration of the people of Virginia represented in this convention, which in strength and manner of statement will compare well with any state paper ever presented to a similar body in a like crisis. Declaring and detailing the acts of lawlessness and violence at Richmond, the convention concluded its indictment with the declaration, "on behalf of the good people of Virginia," that:

> "The preservation of their dearest rights and liberties and their security in person and property imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said (Secession) Convention and executive tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said Convention and Executive, whether legislative, executive or judicial, are vacated."

This declaration, after three days' discussion, was engrossed on parchment and formally adopted, and signed on the 17th day of June by all the members of the convention present, fifty-six in number—by coincidence the same number as the signers of the Declaration of Independence.

Reorganizing the State Machinery.

The next basic measure was the adoption of an ordinance for the reorganization of the State government. It provided for the appointment by the convention of a governor and lieutenant-governor, and a governor's council of five—all to exercise the powers and discharge the duties pertaining to their several offices under the existing laws of Virginia, and to continue until their successors should be elected and qualified. The delegates chosen to the General Assembly, and the senators entitled under existing laws to

seats in that body, to constitute the legislature of the State and discharge the duties and exercise the powers pertaining thereto. All officers assuming and holding office were required to take an oath to support the constitution of the United States and "to uphold and defend the government ordained by the convention which assembled at Wheeling on the 11th day of June, 1861."

Other ordinances were passed necessary to provide for the detail connected with re-starting the machinery of local government, state and county.

At the end of fourteen days it was thought the work was complete enough to permit an adjournment; and the convention accordingly took a recess until the 6th of August. Governor Peirpoint had made his appeal to the President of the United States for the aid against insurrection to which the State was entitled, and had received official assurance through the Secretary of War that it would be rendered speedily.

Review of What Had Been Done.

On the day of this adjournment the convention issued an address, written by Daniel Lamb, of Wheeling—the master mind of the whole restoration movement, without whose approval no important single step was taken. This address states clearly, in temperate language the general scope of the movement now about consummated. It also details many of the outrageous measures of usurpation and violence which had compelled the action taken by this convention as the only lawful and peaceful mode of self-defense. As a whole, the document is an admirable presentation of an extraordinary passage in American history, but it is too long to be copied here entire. Some extracts follow:

"The proceedings of the Richmond convention up to the 17th of April were evidently intended by those in the secret to persuade the members favorable to the perpetuity of the Union to propose terms on which it could be maintained. On that day the mask was thrown aside and the secession ordinance passed."

Touching the conditions under which the people had been called on to vote May 23rd—a month after the Confederacy had taken military possession of the State—whether they would ratify the ordinance of secession, we quote:

"Threats of personal and other intimidation, such as had been uttered upon the floor of the usurping Convention against the remaining friends of the Union there, were used by the adherents of the conspirators in every county in the State. Judges charged the grand juries that opposition to Disunion would be punished as treason against the Commonwealth; and the armed partisans of the conspirators in various places arrested, plundered and exiled peaceable citizens for no other crime than their adherence to the Union their fathers had constructed and under which they had been born and lived in prosperity and peace.

"The great principle which underlies all free government—the principle that the will of the people is the supreme law, or, as expressed in the Declaration of Independence, that 'Governments derive their just powers from the consent of the governed,' and, in our own Bill of Rights, that 'All power is vested in and consequently derived from the people,' has not only been violated and set at naught but has been trampled under foot. The men justly termed conspirators, because they cannot show you warrant for their acts, were, when this Convention met, practically in full possession of every branch of the State government and still claim the right to exercise their usurped power; and if you submit to their acts of secession and affiliation with usurpers like themselves, you yield to them the right to govern you in perpetuity.

"Impressed with these views, the northwestern counties of the State, knowing that a large majority of their people remained and would remain faithful to the Union under all circumstances, met in convention in Wheeling on the 13th of May last to consult upon their condition and to take such steps as it might indicate. It was literally a mass convention, and from the irregular manner

of the appointment of its delegates was not calculated for the despatch of business. As result of its deliberations, the convention which now addresses you was called; the representation in which is proportioned to that of the General Assembly. The number of counties actually represented is thirty-four; and we have reliable assurance that several which are now with us in spirit will ere long be present by their regularly appointed delegates. Considering that in so many counties free expression of opinion unfavorable to the conspirators is suppressed, the number already represented is larger than could have been anticipated. Several of the delegates present escaped from their counties at the risk of their lives, while others are still detained at home by force or menace against them or their families and property.

"Besides submission to palpable usurpation, there was but one alternative, namely: Under the authority of numerous precedents in the history of nations, to assume the conduct of the government on the ground that those previously entrusted with its administration, by their numerous illegal and unconstitutional acts in plain derogation of the rights of the people, had, in the language of the Declaration of Independence, 'abdicated government by declaring us out of their protection and waging war against us,' whereby, in the words of the same instrument, 'the legislative powers, incapable of annihilation, have returned to the people for their exercise.'*

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*In the U. S. House of Representatives, in the memorial proceedings upon the unveiling and acceptance of the Peirpoint monument, Hon. William P. Hubbard, in the course of his address said:

"The Union men of Virginia, with their instincts and genius for orderly government, did the same things which under like circumstances had been done by other free peoples before them, just as we can see that nothing was then done which could have been better done otherwise.

"Three centuries ago, the United provinces of the Netherlands declared that they forsook Philip because he had forsaken them, and that they had a right to depose him and elect another in his room. But that government did not perish because he had abdicated it; and for years the Netherlands, in the name of Philip, waged war against Philip.

"A century later, the lords and commons of England, not in Parliament but in a convention, published a declaration of right, reciting the errors and rights of James and asserting that he had abdicated the Government.

"After yet another century, our Declaration of Independence asserted that legislative powers are incapable of annihilation; and that when the persons entrusted with those powers cease to exercise them, they may be resumed by the people, and recited the

"This Convention, therefore, in humble but as they firmly believe proper imitation of the sages of '76, have 'in the name and on behalf of the good people of Virginia' issued their Declaration 'that the preservation of their dearest rights and liberties, and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth.'

"In pursuance of this Declaration, we have passed such ordinances as are immediately necessary to reorganize the government and put it in operation. We have appointed a Governor, Lieutenant Governor, Attorney General and Executive Council, leaving to the General Assembly, which we have directed to be convened at a very early day, to fill or provide for filling all other offices as soon as in their judgment it can properly be done. The terms of the officers we have appointed are limited to six months or until the election and qualification of their successors, for which the General Assembly is authority to provide at the earliest possible period.

"In all this, our fellow citizens will clearly perceive that there has been no disposition to assume any power or authority not demanded by the exigencies of their present unhappy condition, or to retain it longer than a regard for their highest interests may require.

"Under all these circumstances, with the firm conviction that the course adopted is the only one by which the State can be retained in the Union and the liberties and rights of the people secured and perpetuated, we most earnestly call upon our loyal fellow-citizens in every county of the Commonwealth, who are not already represented in the General Assembly and in this Con-

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usurpations and wrongs because of which the United Colonies were absolved from all allegiance to the British crown.

"And so, in still another century, the loyal people of West Virginia annulled the acts of those who in the name of Virginia had violated the provisions of the constitution of the United States forbidding any State to enter into any treaty, alliance or confederation, or, without the consent of Congress, to enter into any agreement or compact with another State; and that loyal people went on to exercise the powers of government which had been abdicated at Richmond."

On the same occasion, in the U. S. Senate, Senator Dolliver, of Iowa, a native son of Virginia, said:

"I have compared the proceedings of these mountain people of my native State with the parliamentary debates around which English liberty has been organized in all centuries; and I am not exaggerating anything when I say that the men who rode on

vention, to elect members of the Legislature and appoint delegates to this body at the earliest possible moment. Writs of election will be issued by the Executive whenever it appears they can be executed and representatives from every county will be most cordially received. No suspension or essential change in any part of the constitution or laws of the Commonwealth, unless positively demanded by the exigencies of the times, will be made, until the will of the whole people or of their authorized representatives can be freely expressed; and such changes as have been or may hereafter be so demanded will be submitted for ratification at an early day."

In debate, August 16th, answering some objections made by Mr. Lewis of Harrison, to the manner of organizing what he referred to as a "provisional government," Mr. Lamb took some pains to explain that the restored government was not a "provisional" government. It was designed to perpetuate a regular and permanent succession. (For Mr. Lamb's remarks see p. 371, Rend. Va.)

Restoration Approved by the Supreme Authorities.

The authority and regularity of the Restoration at Wheeling received, as it was entitled to, the recognition of all branches of the United States government. Representatives chosen at elections held under writs issued by Gov. Peirpoint were admitted to seats in the House of Representatives. Senators elected by the General Assembly of the Restored government at Wheeling were admitted to the places in the United States Senate vacated by Mason and Hunter. Governor Peirpoint had already been recognized

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horseback into Wheeling from the mountains and tied their horses behind the old hotel with which my boyhood was familiar and inquired of a policeman where the Convention was meeting—these men created a literature as lofty, as pure, as patriotic, as interpretative of the spirit of freedom, as was ever made in either England or America in all the struggles which have been fought out in the progress of civil liberty."

as the rightful executive of Virginia, in the response made to his demand for the protection against insurrection guaranteed by the constitution. Thus the two great controlling branches of the Government (legislative and executive) had acted in clear conformity to the ruling of the third, the judiciary.

In an opinion reported in Howard, p. 47, speaking of the power of the President of the United States to decide which is the rightful government of a state when there are contesting organizations, Chief Justice Taney, declaring the opinion of the Court, said this power could not be placed more safely nor where it would be more effectual. "When citizens of the same State," he said, "are in arms against each other and the constituted authorities are unable to execute the laws, the interposition of the United States must be prompt or it is of little value. The ordinary course of proceedings in courts of justice would be utterly unfit for the crisis. The elevated office of the President, chosen as he is by the people of the United States, and the high responsibility he could not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against wilful abuse of power as human foresight could well provide. At all events, it is conferred upon him by the constitution and laws of the United States and must therefore be respected in its judicial proceedings."

The Restored government of Virginia having been thus recognized and declared to be the rightful government of Virginia,

1st—By the executive branch of the United States Government;

2nd—By both Houses of the Congress of the United States;

3rd—By decisions of the Supreme Court of the United States declaring the President is empowered by the constitution to decide on the validity of contesting State governments,

one does not readily see just what becomes of the pronunciamento of the eminent Pennsylvania senator, that the setting up of "the Peirpoint government" was "revolution pure and simple," and that Peirpoint was an "usurper."

The Restored Government at Richmond.

But the genesis of Old Virginia would not be complete without a statement of what happened to the Restored government after it was removed to its ancient capital in May, 1865. Even that has been so long ago, transpired under such pressure of more exciting events, and attracted so little attention at the time, that it is at this day almost forgotten.

The defeated rebel element in Virginia had been humiliated into the dust by the surrender of the Confederate armies. Immediately following the assassination of Lincoln and the succession of Andrew Johnson, they were reinspired by Mr. Johnson's deplorable "policies" towards Southern leaders and politicians with new hope and expectations of effecting their original purpose by political combination with the disloyal element in the North. In the winter of 1865-66, Congress constituted a joint committee on reconstruction to investigate the menacing developments of this new revolt in the Southern States, including Virginia. The sworn testimony taken by this committee was submitted at the first session of the 39th Congress. It fills a volume of 800 large and closely printed pages. Fifty Virginia witnesses were

examined—some of them distinguished men; some loyal through the war; some disloyal—Gen. Lee and John Baldwin among them; others on the fence; some in the humble walks of life, among them a number of intelligent negroes. Their story covers 166 pages of the volume. In its human interest, it is "like a tale that is told"—rather a series of tales—touching grave social, political and economic problems of both local and national importance.

One of the many subjects of inquiry was the attitude of the Virginia leaders and people towards the Restored State Government of Virginia.

When West Virginia had become an independent State in June, 1863, the Restored Government was removed to Alexandria, where it remained *in esse*, awaiting the overthrow of the Confederate military power. That government was not "provisional." The framer and director of its structure, Daniel Lamb, distinctly explained in the August sitting of the June convention at Wheeling, that it had been planned for permanence; and the necessary formalities of elections, appointments and legislative sessions had been observed within the territory under military protection around Alexandria. When, following the surrender of the Confederate armies, this Restored government was to be put into operation over the whole State, it was realized that even under the most favorable conditions it would require time and forbearance to establish the new government in the ancient capital. The constitution had been amended so as to preserve a loyal control till conditions should justify the removal of restrictions by lawful and regular procedure. The removal to Richmond occurred (perhaps of necessity) at a crisis when the mischievous "policies" of President Johnson had taken a strong grip on the Confederate leaders

in Virginia; had awakened wild expectations that they were to come back at last by political combinations and diplomacy to the domination they had thrown away by their military revolt. They were in no temper to wait for the healing ministries of time or the growth of commercial and economic rehabilitation. The fatal virus of Johnsonism had made it impossible. The "get back quick" hunger was overpowering.

Governor Peirpoint's position was painfully unenviable. The hardships the people of Virginia had brought upon themselves appealed to him strongly; and he gave way to his sympathies, more perhaps than was wise. For rulers in great crises must be firm as well as kind.

Complaints had been made by loyal citizens of Alexandria, Fairfax and some other counties that in calling an election to choose a new legislature, with a view to so amend the Alexandria constitution as to remove the political disabilities of the Virginia ex-Confederates, Gov. Peirpoint had been overreached by the leaders at Richmond and had made a fatal surrender by recognizing an unlawful Assembly elected in disregard of the existing restrictions in the Alexandria constitution. Some of the witnesses who testified regarding this matter reflected on the executive severely; others apparently excused him as having done the best he could under the difficult circumstances. The statement of Charles H. Lewis, Gov. Peirpoint's secretary of the commonwealth, is perhaps the most comprehensive and perspicuous one made. Mr. Lewis was a citizen of Rockingham county; a brother of John F. Lewis, who had been one of the delegates from that county in the Richmond convention and the only loyal member east of the mountains who refused to the end to sign the ordinance of secession. In the course of his statement, Mr. Lewis said:

Question. And in the meantime the legislature of Virginia had assembled?

Answer. Yes, sir. The legislature assembled the first Monday in December, 1865—that is, what claims to be the present legislature of Virginia.

Question. Composed, I suppose, of members elected under the laws of Virginia?

Answer. Yes, sir. They so claim.

Question. Were they elected under the laws passed by the rebel legislature of Virginia, or under the old laws in force before the rebellion?

Answer. It is proper that I should give some explanation of that election. On our return to Richmond, what is called the Alexandria constitution was in operation—that is, a constitution adopted by the convention assembled at Alexandria in 1864. That constitution was framed, of course, under what is called the Restored Government. I mean the government which was recognized by the government of the United States. It was called the Restored Government of Virginia because it was restored at Wheeling by a loyal convention assembled there. That Alexandria constitution was in operation and was recognized as the constitution of Virginia. There was an article in that constitution which forbade all persons from voting who did not take and subscribe an oath that they would be loyal to the government of the United States; that they recognized and would uphold the government of Virginia as established at Wheeling in June, 1861; and that since the first day of January, 1864, they had not been voluntarily engaged in the rebellion against the government of the United States. That was the substance of the oath. That article of the constitution further provided that no person should hold office who had held any office, military or civil, except county offices, under the so-called government of the Confederate States or under any State government in rebellion against the government of the United States. The legislature of Virginia which was called the Alexandria legislature was convened by Governor Peirpoint at Richmond in a called session in June, 1865. That legislature provided that the governor should submit to the people at the next election for members of Congress and of the general assembly the question whether the next legislature should have power to alter and amend that third article of the constitution. At the same election at which the vote was taken a number of persons were elected as members of the general assembly who were ineligible under the third article of the constitution. On the day of the assembling of the legislature at Richmond the house of delegates was organized without any refer-

ence to the ineligibility of any person claiming to be a member under that third article of the constitution. The legislature, after being organized, took measures to remove the restrictions, although a number of the persons who voted for the removal of the restrictions were ineligible under the constitution. Their first act was to elect a speaker who had been a member of the Confederate Congress—Colonel John B. Baldwin.

Question. Were you turned out of office?

Answer. I was not re-elected to the office of Secretary of the Commonwealth.

Question. When would your term of office expire?

Answer. The legislature proceeded to the election of a Secretary of the Commonwealth, by joint ballot, under a resolution adopted by themselves. But for that resolution my term of office would not have expired until January, 1867.

Question. Whom did they elect in your place?

Answer. Mr. John M. Herndon.

Question. What was his political character?

Answer. I do not know further than that I have always heard and believed that he sympathized and acted with the secession party during the war.

Question. State whether the removal from office by joint action of the legislature was general in Virginia?

Answer. Every Union man who held office by Governor Peirpoint's appointment, whom the legislature could reach, was removed.

Dr. Arthur Watson, a resident of Accomac county, who had been a member of the convention which had amended the constitution, made the following answers, in the course of his examination:

Question. Do you think of anything else you deem it important to state?

Answer. I would like to bring to your notice the action of the present legislature. We had a legislature which sat in June, 1865. That legislature was composed of less than thirty members, embracing both houses. Although the constitution requires that the lower house of the legislature shall consist of not less than 80 nor more than 104 members, and the senate shall consist of not less than one-third nor more than one-half of the number of the lower house, in order to compose a constitutional legislature. That legislature in June 1st, composed of less than 30 members, passed an act enfranchising those people of Virginia who had been dis-

franchised by the constitution as amended in Alexandria in 1864; that is, they submitted to the people of Virginia the proposition whether the third article of that constitution should be amended. There was a majority of votes cast in favor of amending that article of the constitution.

The legislature elected in the fall of 1865 assembled in Richmond on the 1st of December, 1865, and they amended the third article of the constitution of Virginia so as to enfranchise and give to themselves the right to hold office as members of that legislature; whereas the third article of the constitution of Virginia expressly provides that no man shall either vote or hold office in Virginia who has ever held office under the government of the Confederate States or under any State government in rebellion against the government of the United States. By that third article those very men were prohibited from either voting or holding any office under the State of Virginia. But before amending that third article of the constitution of Virginia, which they claimed they had the right to do because of the people of Virginia voting in favor of amending it, they took their seats and removed the prohibition which the constitution placed upon themselves.

Question. That was an unconstitutional proceeding on their part?

Answer. Certainly.

Question. Entirely revolutionary?

Answer. Yes, sir; and I claim that in consequence of that proceeding they have not administered the government in a republican manner—that they were usurpers. I have written an article to that effect, which I intended to have published, but which I have not yet published. I also claim that Governor Peirpoint, in recognizing the illegal legislature of June, 1865, and in recognizing the present legislature before the constitutional prohibition was removed, usurped power which was expressly prohibited to him.

Question. And the result is that the government of the State of Virginia is in the hands of the rebels?

Answer. Entirely so, by their own illegal and unconstitutional acts.

Question. Are you aware that President Lincoln interfered in any way in that respect?

Answer. I am not.

Question. Did Governor Peirpoint remonstrate or protest against any such proceeding?

Answer. He did not. I was told by a reliable gentleman that his attention was called to the fact, but he made no remonstrance.

He sent in his messages to that legislature as though it was entirely legal.

Question. He sent his messages to it, and received its acts for his signature as though it was the legal legislature of the State of Virginia?

Answer. Yes, sir.

These quotations sufficiently show the substantial fact that, under pressure of an eager purpose to get control of the General Assembly, an illegal legislature was chosen whom Governor Peirpoint (weakly and mistakenly, in the opinion of some of the witnesses) recognized as the lawful legislature of Virginia by sending in his messages, when, in fact, a number of them were not entitled to be elected or to qualify on account of constitutional disabilities.

John B. Baldwin, of Rockingham county, who had turned traitor in the Secession convention at the last moment; who had betrayed the confidence of President Lincoln when sent to him by Summers; who had signed the ordinance of secession and voted for it at the polls; had been commissioned a colonel in the Confederate army and, by special dispensation allowed to sit in the Confederate Congress through the war—was elected Speaker of the House, and while Speaker was a witness before the Reconstruction Committee. It appears, further, that though Governor Peirpoint was permitted to serve out his term, his Secretary of the Commonwealth was turned out, with other subordinate officers; and, according to some of the witnesses, that it was but a short time till every loyal man he had appointed was removed and disloyal men appointed in their places. Thus did the reawakened revolt exhibit its implacable spirit and purpose.

In a word the Restored Government had been seized and usurped by violence, just as the original organization, ninety

years before at Williamsburg, was usurped by the persons who had been burgesses of the colony under Lord Dunmore, the royal governor. Through the assassination of one president and the hope of treachery in his successor, the purpose to win by violence, if necessary, remained persistent and inflexible. The Virginia government as it exists at Richmond today, therefore, carries this stain of invalidity, and is just about as "legitimate" as the original commonwealth.

STATE SOVEREIGNTY—SECESSION.

The Attitude of Senator Oliver.

Let us turn into another field and talk a little about the Peirpoint "usurpation" and the State Sovereignty dogma. Mr. Oliver does not recognize the authority of the three great co-ordinate branches of the United States government to settle the national issue raised by the Rebellion. Fifty years after this issue had been adjudicated, first by the military power, and next by the judicial, the legislative and the executive powers of the nation—constituting its whole and sole authority—he declares in his place in the Senate that the restoration of the Virginia government was "revolution, pure and simple," and Governor Peirpoint a "usurper." This is precisely the attitude of Jefferson Davis in his book, "The Rise and Fall of the Confederate Government." It is a clean cut issue between these two distinguished gentlemen, on the one hand, and the solid authority of the United States government on the other. If there had been no Restoration of the Virginia government at Wheeling, under recognition and support of the United States, and no subsequent organization of a separate State under which military resistance to occupancy by the Confederacy was successfully organized, it is probable that Pittsburgh, where the Senator was then a youth, would have been in very close and uncomfortable propinquity to the Southern Confederacy.

Hayne and Webster in the Senate.

When Gen. Hayne of South Carolina—the ideal orator and statesman of his time in the South—launched his thunderbolt in the Senate on the Foote resolution, in 1829, he was answered by Webster in vindication of the Constitution and the Union, in terms so magnificent that the whole country thrilled with the splendor of his theme and his superb treatment of it. It was the first time the great controversy had come into the highest forum of the nation. Then the people realized, as never before, on the one hand the grandeur of the American nationality, and on the other the terrors of dissolution—"States dissevered, discordant, belligerent! A land rent with civil feuds, or drenched, it may be, in fraternal blood!"

Old Hickory Ready to Hang Calhoun.

The threat of nullification by South Carolina was answered by the proclamation of President Jackson. John Minor Botts, in his "Great Rebellion," declares that Jackson would have hanged Calhoun if a by-pass had not been found in Clay's tariff compromises through which Calhoun and South Carolina were permitted to withdraw the issue they had raised.

To Mr. Botts' testimony may be added a statement made in his later years by Hon. William Kennon, of St. Clairsville, Ohio, who had been associated in earlier life with Webster, Clay and Calhoun at Washington. In his "Bonnie Belmont," Judge John S. Cochran, who had studied law under Judge Kennon, says Mr. Kennon, being asked one day for an estimate of the three men, made the following statement in regard to Calhoun:

"Judge Kennon said it was the firm determination of President Jackson to have had Calhoun shot by drum-head court-martial had he performed one covert act in carrying out his principle of nullification while a United States senator; that at one time it was noised about in Washington that Calhoun contemplated making a speech in the Senate resigning his seat and then going home to his own State to participate in a movement withdrawing from the Union; that Jackson prepared to arrest him if he did, and to that end had every avenue of escape from Washington guarded; and that when Calhoun was quietly informed of Jackson's intentions he actually turned pale, for he knew what the old hero of New Orleans undertook he would execute, regardless of consequences."

Afterwards, answering Calhoun's great sophistical argument in the Senate, Mr. Webster held:

Webster's Argument Against Nullification.

Beginning with the original error that the constitution of the United States is nothing but a compact between sovereign states; asserting, in the next step that each state has the right to be its own sole judge of the extent of its obligations, and consequently of the constitutionality of the laws of Congress; and, in the next, that it may oppose whatever it sees fit to declare unconstitutional, and that it decides for itself on the mode and measure of redress, the argument arrives at once at the conclusion that what a state dissents from it may nullify; what it opposes it may oppose by force; what it decides for itself it may execute by its own power; and that, in short, it is itself supreme over the decisions of the national adjudicature—supreme over the supreme law of the land.

However, it seeks to protect itself against these inferences by saying that an unconstitutional law is no law, and that it only opposes such laws as are unconstitutional. Yet this does not in the slightest degree vary the result, since it insists on deciding this question for itself; and, in opposition to reason and argument, to practice and experience, to the judgment of others having an equal right to judge; and it says only: "Such is my opinion, and my opinion shall be my law; and I will support it by my own strong hand. I denounce the law; I declare it unconstitutional. Men and arms are ready to resist its execution."

Against such theories Mr. Webster maintained:

First. That the constitution of the United States is not a league, confederacy or compact between the people of the several

states in their sovereign capacities; but a government founded on the adoption of the people and creating direct relations between itself and individuals.

Second. That no state authority has power to dissolve those relations; that nothing can dissolve them but revolution; and that, consequently, there can be no such thing as secession without revolution.

Third. That there is a supreme law consisting of the Constitution of the United States, the acts of Congress passed in pursuance of it, and treaties; and that in cases not capable of assuming the character of a suit in law or equity, Congress must judge of and finally interpret this supreme law when it has occasion to pass acts of legislation; and in cases permitting the assumption of and actually assuming, the character of a suit, the Supreme Court of the United States is the final interpreter.

Fourth. That an attempt by a state to abrogate, annul or nullify an act of Congress, or to arrest its operation within her limits, on the ground that in her opinion such law is unconstitutional, is a direct usurpation of the just powers of the General Government, in derogation of the equal rights of the other states; a plain violation of the constitution and a proceeding essentially revolutionary.

Jackson's Defense of the Union.

The proclamation issued by President Jackson in this South Carolina crisis declared:

"The constitution of the United States forms a government, not a league. It is a government in which all the people are represented; which operates directly on the individual, not upon the States. They retain all the power they did not grant; but each State having expressly parted with so many powers as to constitute jointly with the other States a single nation, cannot from that period possess any right to secede, because such secession does not break a league but destroys the unity of a nation; and any injury to that unity is not only a breach which would result from the contravention of a compact but it is an offense against the whole Union.

"To say that any State may at pleasure secede from the Union is to say that the United States are not a nation; because it would be a solecism to contend that any part of a nation might dissolve its connection with the other parts to their injury or ruin without committing any offense.

"Secession, like any other revolutionary act, may be morally justified by the extremity of oppression; but to call it a constitutional right is to confound the meaning of terms and can only be done through gross error or to deceive those who are willing to assert a right but would pause before they made a revolution or incurred the penalty consequent on failure."

In regard to President Jackson's proclamation, Mr. Webster said:

"Its great and leading doctrines I regard as the true and only doctrines of the constitution. They constitute the sole ground on which dismemberment can be resisted. Nothing else, in my opinion, can hold us together. While those opinions are entertained, the Union will last; when they shall be generally rejected and abandoned, that Union will be at the mercy of a temporary majority in any one of the States."

This exposition of the nature of the tie which binds the people of all these States today—many in one—is as convincing a judgment as was ever pronounced on a great public issue in any country. Fifty years ago, this issue was appealed to the court of last resort, and the judgment rendered by that dread tribunal sustained the argument of Webster and Jackson. That judgment has been accepted as unanswerable, except by a bereft minority in the South, where the sophisms of Jefferson and Calhoun were once thought to be serviceable to a local interest and to the politics based on it. Even there, the contrary opinion is now held only in the academic sense, as a basis for social organizations; by whom the sacred fire is kept alive in sack-cloth; as ash-covered embers sometimes carry fire long after the conflagration has passed that swept away the structure.

Lincoln's Analysis of "Sovereignty."

There is yet another angle to this great argument in support of nationality. Abraham Lincoln, in the recesses

of his almost unsearchable wisdom, applying a simple but masterful analysis, has shown how impossible it would be for this continental people to exist under any government not centered around a strong core of authority and bound together by indissoluble ties.

In his first message to Congress, July 4, 1861, he discussed the dogma which had just then embroiled the country in civil war—the pretense that under the constitution States were possessed of "sovereignty," and that each had a right to withdraw from the Union at its own pleasure without consent of the others. His argument is analytic—not stated, as Webster's is, in legal formula—but his analysis is even more convincing than Webster's logic.

It begins with a recital of historical facts: with the statement that for (then) thirty years the conspirators in the South had been preparing their people for secession, by inculcating studiously the proposition that the right of secession could be exercised legally and peaceably. They refrained from any suggestion that it was a resort to war, rebellion or revolution.

Mr. Lincoln then takes up the assumption that a State is invested with "sovereignty." Not one of the States, he says, ever possessed such an attribute. Not one of them ever was a State until combined into the first Union under the Articles of Confederation. The name "States" was first assumed in the Declaration of Independence. The "United Colonies" were declared to be "free and independent States"—independent, not of one another, but of the mother country.

Two years after this declaration, all of the colonies then existing combined under the Articles of Confederation in a "perpetual union." Under this union, and likewise

under the later union created by the constitution, none of these had any more power or sovereignty than was reserved to them by the express terms of the instrument of union.

President Lincoln defines a "sovereign power" as "a community which has no political superior." Tested by this standard, no one of the States except Texas ever was a sovereignty; and Texas gave up that character by coming into the Union. The States have their status as states in the Union, and never had such legal status anywhere else. "If they break away from this," said Lincoln, "they can only do so against law by revolution. The Union is older than any of the States, and, in fact, it created them as states. No one of them ever had a state constitution independent of the Union. The powers reserved to them, either under the first or the existing Union, did not include any which could constitute sovereignty. None of them ever had independent relations with foreign governments."

True Basis of Federation.

The true principle of national power and State rights, declared Mr. Lincoln, is this: "Whatever concerns the whole, should be confided to the whole—to the general Government. Whatever concerns only the State should be left exclusively to the State." There has never been a more comprehensive and felicitous embodiment in words of the true bases for an American commonwealth.

How Would Secession Work?

President Lincoln thus runs out the practical operation of the exercise of a right of secession:

"The Union purchased with money the countries out of which several of these States were formed. Is it just that they shall go off without leave and without refunding?

"The Union paid a very large sum (in the aggregate nearly a hundred millions) to relieve Florida of the aboriginal tribes. Is it just that they shall now be off without making any restitution?

"The Union is now in debt for money applied to the benefit of these so-called seceded States, in common with the rest. Is it just either that creditors shall go unpaid or that the remaining States pay the whole?

"If one State may secede, so may another. When all shall have seceded, none is left to pay the debts."

The principle of secession, it is thus seen, is one upon which no nation can endure. When the United States, by this process of elimination, had reached the vanishing point, what would foreign holders of its bonds have to say? Need it be asked what they would do? They would come in with their armies and navies and recoup themselves by taking possession of the helpless territory.

The men who planned the American Rebellion lacked the essentials of statesmanship. They either had no comprehension of the profound causes shaping the future of the American people, or they were so reckless and desperate they did not care what might be the consequences of their application of the torch to a greater than the Ephesian dome.

Suppose their theory of a peaceful secession could be put into operation today, what would be the situation of these half hundred States, with their vast and complex interests? What the situation of the hundred millions of people, now happy and prosperous, inhabiting them? How long could we maintain peaceful relations with foreign powers? And how defend ourselves against their aggression? How could we organize, with a lot of mutually repellant sovereignties, with no unity of interest and no concert of action? How would the "Republic of Virginia" maintain itself against such a power as Germany? Or California against Japan? Or New York against Great Britain?

How long could these separate "sovereignties"—divided only by rivers, or lakes, or imaginery lines—even maintain amicable relations with one another? Each of these States or groups of States would be a foreign power to every other. Each would have its own tariff, its vexatious custom houses at the frontier; its regulations and guards to prevent smuggling; each its diplomatic staff to deal with the new, complex and ever multiplying international differences. How could the enormous internal commerce of this great country (then no longer interstate but international) be handled, either by rail or keel? An inextricable maze of treaty and diplomatic agreements and arrangements would be required to move the crops and the return merchandise of a single season, even if all were friendly and peaceable. In time of war, some States would starve for lack of what was rotting in the fields or warehouses of other (hostile) States.

This great country, spanning a continent, embracing the coast slopes of two oceans and the valleys of one of the greatest river systems in the world, was not made for petty divisions of control. It could no more endure the operation of State secession than a living man could endure dismemberment on the butcher's block.

If State sovereignty was ever possible for this federation, it is possible no longer. Even as an academic issue, there is no longer room for it. We have outgrown it. For better or worse—for weal or woe—this people must live together, under one flag, with a common destiny, for a term to which no statesmanship can now assign a limit.

Sovereignty is the attribute solely of national unity. The unit may be large, or it may be small; but a unit it must be. The American unit is already continental. We cannot foresee how it is to be reduced, or when safety will admit

of less centripetal force. Such as it is, we must abide with it and try to make it the home of a great orderly people.

"Finally, Brethren."

Returning to the text from this wide excursion, are we not warranted in claiming that the reorganization of the Virginia government by the people of Northwest Virginia—the only portion of the commonwealth where her citizens could make effective protest—was not only "justified by the dire emergency," as admitted by Senator Oliver, but justified and supported by the highest law-making and law-declaring authorities of the nation? When the President of the United States, the two Houses of Congress and the Supreme Court—the three supreme co-ordinate powers of the Government—unite in declaring that "what was done in the mountains of West Virginia" (in the words of Senator Dolliver of Iowa, himself an eloquent son of the Old Dominion) was not only necessary but lawful and valid, who is there to gainsay it?

All this is but to declare, with equal force, that while the right of revolution exists everywhere, the right of secession cannot exist in a nation, and that "State sovereignty" in the American Union is today but the phantom of a stupendous folly.

May it not be added, by way of grace after meat, that what was so done in the West Virginia mountains was "not only respectable but illustrious"; and was, as Mr. Oliver declared in the opening of his address, "one of the romances of American history."

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